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JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 425

WILLIAM H. "BILL" CROSS, FLOYD L. CULLINS, LYMAN GAGE REYNOLDS, ALDEEN CARSWELL and AMOS HARRIS, JR.,

Appellants,

vs.

STATE OF FLORIDA,

Appellee

PETITION FOR REHEARING

A. K. BLACK
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Lake City, Florida

Attorney for Appellants

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The Petitioners, William H. "Bill" Cross, et als, by their counsel respectfully request this Court to grant a re-hearing, or further hearing herein, in this cause and assign the following grounds therefor:

1. The rule as announced in the case of *Staub v. Baxley*, 355 U. S. 313, 2 L. ed 2d 303, 78 S. Ct. 277, is applicable to the cause under consideration and especially the following excerpts therefrom, to-wit:

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> ". . . Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." Whether the constitutional rights asserted by the appellant were ". . . given due recognition by the (Court of Appeals) is a question as to which the (appellant is) entitled to invoke our judgment, and this (she has) done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support . . . (for) if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided."

In American Bar Association Journal, January, 1962, Volume 48, Number 1, on page 62, it is said . . "The Supreme Court divided as to its proper application. Note 38," referring the case cited above, *Uphaus v. Wyman*, 364 U. S. 388; and *Wolfe v. North Carolina*, 364 U. S. 177.

2. The attention of the Court is directed to an intervening circumstance of a substantial nature. This relates to the rendition of the case and opinion in *Harris Leveson, Jr. v. State*

of Florida, 138 So 2d 361, District Court of Appeal, Third District of Florida, March 1, 1962, (#61,512), in which the State of Florida has therein recognized and announced that the case of *Jones v. U. S.*, 362 U. S. 257, 80 S. Ct. 725, 4 L. Ed 697, shall be accepted in Florida as authority that one may attack a search and seizure when not the owner of the place searched. It is to the effect one may do so when he is an aggrieved party. This decision is in conflict with *Tribue v. State*, 106 So 2d 630, District Court of Appeal, Second District (1958), to the effect one must prove himself the owner of the premises.

The foregoing two cases, to-wit: *Harris Leveson, Jr. v. State of Florida*, 138 So 2d 361, District Court of Appeal, Third District of Florida, March 1, 1962, (#61,512), and *Staub v. Baxley*, 355 U. S. 313, 2 L. ed 2d 303, 78 S. Ct. 277, are substantial and not previously cited and counsel respectfully urged these should be considered.

Respectfully submitted,

A. K. BLACK
P. O. Box 527
Lake City, Florida

Attorney for Appellants

CERTIFICATE

Undersigned counsel certifies this Petition is presented in good faith, not for delay and said Petition is restricted to the specified grounds.

A. K. BLACK
Attorney for Appellants

SERVICE OF PETITION

A. K. Black, attorney for Petitioners, certifies that a copy of the foregoing Petition for Re-hearing was furnished to Honorable Richard W. Ervin, Attorney General, Tallahassee, Florida, on this the ——— day of April, 1962.

Attorney